

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-20040436
SALES AND USE TAX
FOR TAX YEARS 2000-2003**

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ISSUE

I. Sales and Use Tax: Fuel Sales

Authority: IC 6-8.1-5-1(b); IC 6-2.5-7-3.

Taxpayer protests the assessment of sales tax on fuel sold through metered pumps.

STATEMENT OF FACTS

Taxpayer owns and operates a convenience store and gas station. The taxpayer had an arrangement with another area retailer. The arrangement allowed the area retailer to provide fueling cards to its clients, whereby those clients could purchase fuel from the taxpayer's pumps. The taxpayer did not charge the clients at the pump, but rather billed the area retailer for the amount of fuel dispensed to their clients at the purchase price per gallon (including prepaid sales tax) plus five cents per gallon. The area retailer then in turn billed their clients. On audit, the Department assessed additional sales tax on the gasoline sold through the taxpayer's metered pumps. The taxpayer submitted a protest challenging the assessment. The Department held a hearing and now presents this Letter of Findings.

I. Sales and Use Tax: Gasoline Sales

DISCUSSION

The taxpayer argues the Department erred in assessing additional sales tax. The taxpayer contends the Department collected the sales tax when the area retailer bills its clients.

Indiana Department of Revenue assessments are prima facie evidence the department's claim for unpaid taxes is valid. IC 6-8.1-5-1(b). The taxpayer has the burden of proving whether the department incorrectly imposed the assessment. Id.

IC 6-2.5-7-3 provides as follows:

(a) With respect to the sale of gasoline which is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$.001), of :

- (1) the price per unit before the addition of state and federal taxes;
multiplied by
- (2) six percent (6%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

The Department finds the transaction between the taxpayer and the area retailer is subject to the retail sales tax. Per IC 6-2.5-7-3, all gasoline sales are subject to sales tax. The statute requires the retail merchant, in this case the taxpayer, to collect and remit the sales tax. No exemption exists for selling fuel to another retailer or for allowing another retailer's clients to use a taxpayer's pump without charging the sales tax. The statute still requires the taxpayer to collect and remit the sales tax, regardless of who is actually billed for the fuel. Therefore, since the taxpayer allowed the area retailer's clients to dispense fuel and the taxpayer failed to collect and remit the sales tax on those transactions, the audit correctly assessed the additional sales tax.

FINDING

For the reasons stated above, the Department denies the taxpayer's protest.